

Senate Bill 40

By: Senators Williams of the 19th, Mullis of the 53rd, Rogers of the 21st, Stoner of the 6th and Pearson of the 51st

A BILL TO BE ENTITLED
AN ACT

To amend Code Section 32-2-2 of the Official Code of Georgia Annotated, relating to the powers and duties of the Department of Transportation generally, so as to specify that the General Assembly may designate agencies or authorities to control projects involving the state highway system; to amend Article 2 of Chapter 10 of Title 32 of the Official Code of Georgia Annotated, relating to the State Road and Tollway Authority, so as to remove control of the authority from the Department of Transportation; to provide for projects to be contracted for and constructed by the authority; to provide for related matters; to provide an effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Code Section 32-2-2 of the Official Code of Georgia Annotated, relating to the powers and duties of the Department of Transportation generally, is amend by revising paragraph (1) of subsection (a) as follows:

"(1) The department shall plan, designate, improve, manage, control, construct, and maintain a state highway system and shall have control of and responsibility for all construction, maintenance, or any other work upon the state highway system and all other work which may be designated to be done by the department by this title or any other law. However, the General Assembly may by general law specifically allow other state agencies or authorities to have control of and responsibility for designated types of projects involving the state highway system. ~~However,~~ In addition, on those portions of the state highway system lying within the corporate limits of any municipality, the department shall be required to provide only substantial maintenance activities and operations, including, but not limited to, reconstruction and major resurfacing, reconstruction of bridges, erection and maintenance of official department signs, painting of striping and pavement delineators, furnishing of guardrails and bridge rails, and other major maintenance activities; and, furthermore, the department may by contract authorize

and require any rapid transit authority created by the General Assembly to plan, design, and construct, at no cost to the department and subject to the department's review and approval of design and construction, segments of the state highway system necessary to replace those portions of the system which the rapid transit authority and the department agree must be relocated in order to avoid conflicts between the rapid transit authority's facilities and the state highway system;"

SECTION 2.

Article 2 of Chapter 10 of Title 32 of the Official Code of Georgia Annotated, relating to the State Road and Tollway Authority, is amended by revising paragraph (5) of Code Section 32-10-63, relating to powers generally of the State Road and Tollway Authority, as follows:

"(5) To make such contracts, leases, or conveyances as the legitimate and necessary purposes of this article shall require, including, but not limited to, contracts for construction or maintenance of projects, provided that the authority shall consider the possible economic, social, and environmental effects of each project, and the authority shall assure that possible adverse economic, social, and environmental effects relating to any proposed project have been fully considered in developing such project and that the final decision on the project is made in the best overall public interest, taking into consideration the need for fast, safe, and efficient transportation, public services, and the cost of eliminating or minimizing adverse economic, social, and environmental effects. Furthermore, in order to assure that adequate consideration is given to economic, social, and environmental effects of any tollway project under consideration, the authority shall:

(A) Follow the processes required for federal-aid highway projects, as determined by the National Environmental Policy Act of 1969, as amended, except that final approval of the adequacy of such consideration shall rest with the Governor, as provided in subparagraph (C) of this paragraph, acting as the chief executive of the state, ~~upon recommendation of the commissioner, acting as chief administrative officer of the Department of Transportation;~~

(B) In the location and design of any project, avoid the taking of or disruption of existing public parkland or public recreation areas unless there are no prudent or feasible project location alternates. The determination of prudence and feasibility shall be the responsibility of the authority as part of the consideration of the overall public interest;

(C) Not approve and proceed with acquisition of rights of way and construction of a project until: (i) there has been held, or there has been offered an opportunity to hold, a public hearing or public hearings on such project in compliance with requirements of the Federal-aid Highway Act of 1970, as amended, except that neither acquisition of

right of way nor construction shall be required to cease on any federal-aid project which has received federal approval pursuant to the National Environmental Policy Act of 1969, as amended, and is subsequently determined to be eligible for construction as an authority project utilizing, in whole or in part, a mix of federal funds and authority funds; and (ii) the adequacy of environmental considerations has been approved by the Governor, for which said approval of the environmental considerations may come in the form of the Governor's acceptance of a federally approved environmental document; and

(D) Let by public competitive bid upon plans and specifications approved by the ~~chief engineer or his or her successors~~ authority all contracts for the construction of projects;"

SECTION 3.

Said article is further amended by revising Code Section 32-10-66, relating to the duty of the authority to prescribe rules and regulations for projects, as follows:

"32-10-66.

It shall be the duty of the authority to prescribe rules and regulations ~~as approved by the department~~ for the operation of each project constructed under this article, including rules and regulations to ensure maximum use of such project. The authority is authorized to promulgate such rules and regulations for the use and occupancy of the project as may be necessary and proper for the public's safety and convenience, for the preservation of its property, and for the collection of tolls."

SECTION 4.

Said article is further amended by revising Code Section 32-10-67, relating to the study, financing, construction, and operation of new projects and cooperation of the Department of Transportation, as follows:

"32-10-67.

(a) The Governor, in his or her discretion ~~or upon the recommendation of the State Transportation Board~~, is authorized and empowered to call a joint meeting of the authority ~~and the board~~ for the purpose of initiating all projects which may be considered under the authority of this article. Upon the concurrence of the Governor, ~~a majority of the board~~, and the authority, ~~the board or~~ the authority is authorized and empowered to commence the study of any given project or projects and to provide for their construction. An appropriate resolution of such joint meeting shall provide for ~~divisions of~~ duties and responsibilities ~~between the authority and the board~~ in connection with such studies. In keeping with such resolution or resolutions, the authority ~~and the board are~~ is authorized, in the performance of ~~their~~ its assigned duties, to expend from any sums available such sums as may be

necessary for the survey and study and completion of any project or projects; and such expenditures may include those necessary for all traffic surveys, expert studies, and all other expense reasonably necessary in establishing the feasibility of any given project and in the execution of all plans, specifications, and all other things necessary for revenue bond financing and construction, including all supervision of every kind required in its completion. ~~If such expenditures, or any part of them, shall be undertaken by the board, the board shall keep proper records which shall reflect the amounts spent on each and every project study. Upon completion of any given project or projects financed by any given revenue bond issued, so long as there shall be funds available in the hands of the authority from the issue of revenue bonds to finance such project or projects, the board may demand the reimbursement of such expenditures, however, if not reimbursed, said expenditures shall be legitimate expenses of operation of the board.~~ The authority, upon the completion or receipt of such studies or plans and specifications or other aids, shall proceed, if such project or projects are possible, to finance, acquire rights of way, construct, and operate such projects pursuant to its purposes, powers, and duties.

(b) ~~Upon the concurrence of the board~~ approval of the authority, the Department of Transportation shall have the right to provide maintenance and operational assistance to the authority as may be necessary to effectuate the purposes of this article, including, but not limited to, authorizing employees of the department to assist the authority in the collection of tolls on authority projects. The authority shall reimburse the department for such assistance."

SECTION 5.

Said article is further amended by revising Code Section 32-10-68, relating to the letting of contracts by competitive bids, as follows:

"32-10-68.

All contracts of the authority for the construction of any project authorized by this article, except as otherwise provided in Part 4 of this article, shall be let to the reliable bidder submitting the lowest sealed bid upon plans and specifications approved by the ~~department~~ authority. The procedures for letting such bids shall conform to those prescribed for the department in Code Sections 32-2-64 through 32-2-72."

SECTION 6.

Said article is further amended by revising Code Section 32-10-72, relating to the authority fund, as follows:

"32-10-72.

All revenue in excess of all obligations of the authority of any nature, together with all unused receipts and gifts of every kind and nature whatsoever, shall be and become the authority fund. The authority, in its discretion, ~~is~~ shall be charged with the duty of pledging, utilizing, or expending the authority fund for the following purposes:

(1) Pledges to the payment of any revenue bond issue requirements, sinking or reserve funds, as may be provided for under Code Section 32-10-102;

(2) The payment of any outstanding unpaid revenue bond obligations or administrative expenses;

(3) The construction of all or any part of projects, the need for which is concurred in by the Governor ~~and the board~~;

(4) The most advantageous obtainable redemptions and retirements of the authority's bonds pursuant to the prepayment redemption privileges accorded to the authority upon the various issues of bonds outstanding;

(5) The most advantageous open market purchase of the authority's bonds that the authority may accomplish;

(6) Investment in such securities and in such manner as it determines to be in its best interest; and

(7) Subject to the terms of any resolution or trust indenture authorizing the issuance of revenue bonds, the transfer of funds to the department to be used by the department for department purposes."

SECTION 7.

Said article is further amended by adding a new part to read as follows:

"Part 4

32-10-140.

As used in this part, the term:

(1) 'Board' means the State Transportation Board.

(2) 'Department' means the Department of Transportation.

(3) 'Local governing authority' includes the governing authority of any county or municipality or any transit authority.

(4) 'Project' means a project subject to the provisions of subsection (b) of Code Section 32-10-141 or other projects which the authority deems appropriate for letting pursuant to the procedures of this part.

32-10-141.

(a) The staff of the authority and the staff of the department shall jointly identify and report to the board by July 31 of each odd-numbered year those 20 projects on the department's State Transportation Improvement Plan or otherwise identified by the department or the authority that afford the greatest gains in congestion mitigation. By that date and with respect to each such project, the department shall report to the board whether construction of such project will be initiated within two years of such date and identify the specific available and complete funding source for each such project.

(b) Any project identified pursuant to subsection (a) of this Code section that will not be initiated by the department within two years of the reporting date or that does not have specific available and complete funding may be let and constructed by the authority utilizing the procedures of this part. The department shall cooperate in all respects at the direction of the authority in the letting, construction, maintenance, and operation of such projects, including without limitation providing such access and control of portions of the state highway system as may be requested by the authority from time to time for such purposes.

32-10-142.

(a)(1) The authority shall evaluate a project to determine, in the judgment of the authority, appropriate or desirable levels of state, local, and private participation in financing such project. In making such determination, the authority shall be authorized and encouraged to seek the advice and input of the department, affected local governing authorities, and the private financial and construction sectors.

(2) The authority shall be authorized to issue a written request for proposal indicating in general terms the scope of the project, the proposed financial participations in the project, and the factors that will be used in evaluating the proposal and containing or incorporating by reference other applicable contractual terms and conditions, including any unique capabilities or qualifications that will be required of the contractor. Public notice of such request for proposal shall be made at least 90 days prior to the date set for receipt of proposals in substantially the same manner utilized by the department to solicit requests for proposals or in other manner as provided for by rule or regulation of the authority.

(3) Upon receipt of a proposal or proposals responsive to the request for proposals, the authority shall accept written public comment, solicited in the same manner as provided for notice of proposals, for a period of 30 days beginning at least ten days after the date set for receipt of proposals. In addition, the authority shall hold at least one public hearing on such proposals not later than the conclusion of the period for public comment.

(4) The authority shall engage in individual discussions with two or more respondents deemed fully qualified, responsible, and suitable on the basis of initial responses and with emphasis on professional competence and ability to meet the level of private financial participation called for by the authority. Repetitive informal interviews shall be permissible. In the event that any local governing authority has agreed to consider financial participation in the project, a representative of such local governing authority, appointed by such local governing authority, may participate in such discussions and interviews. At the discussion stage, the authority may discuss nonbinding estimates of total project costs, including, but not limited to, life cycle costing and nonbinding estimates of price for services. Proprietary information from competing respondents shall not be disclosed to the public or to competitors. At the conclusion of such discussions, on the basis of evaluation factors published in the request for proposal and all information developed in the selection process, the authority, with the input of any participating local governing authority, shall select in the order of preference two or more respondents whose qualifications and proposed services are deemed most meritorious. Negotiations shall then be conducted, beginning with the respondent ranked first and with the participation of the designated representative of any participating local governing authority. If a contract satisfactory and advantageous to the authority and any participating local governing authority can be negotiated at a price considered fair and reasonable, the award shall be made to that respondent. Otherwise, negotiations with the respondent ranked first shall be formally terminated, negotiations conducted with the respondent ranked second, and so on until such a contract can be negotiated at a fair and reasonable price. Notwithstanding the foregoing, if the terms and conditions for multiple awards are included in the request for proposal, a public body may award contracts to more than one respondent. Should the authority determine in writing and in its sole discretion that only one respondent is fully qualified, or that one respondent is clearly more highly qualified and suitable than the others under consideration, a contract may be negotiated and awarded to that respondent.

(5) Nothing in this Code section shall require the authority to continue negotiations or discussions arising out of any request for proposal, and the authority, in its sole discretion, may terminate the process provided for by this Code section at any time.

(6) The authority shall be authorized to promulgate reasonable rules or regulations to assist in its evaluation of the proposal and to implement the purposes of this part. The authority shall report the content of such rules or regulations to the chairpersons of the Transportation Committees of the Senate and House of Representatives upon the promulgation thereof and shall make quarterly reports to the same chairpersons of all of its activities undertaken pursuant to the provisions of this Code section.

(b) Any contracts entered into pursuant to this part may authorize funding to include tolls, fares, or other user fees and tax increments for use of the transportation facility that is the subject of the proposal. Such funding may be distributed by contract among the participants in the project as may be provided for by contract. The authority may take any action to obtain federal, state, or local assistance for a qualifying project that serves the public purpose of this part and may enter into any contracts required to receive such assistance. The authority may determine that it serves the public purpose of this part for all or any portion of the costs of a qualifying project to be paid, directly or indirectly, from the proceeds of a grant or loan made by the federal, state, or local government or any instrumentality thereof. The department or the authority may agree to make grants or loans to the operator from time to time from amounts received from the federal, state, or local government or any agency or instrumentality.

(c) The authority shall be authorized to delegate such duties and responsibilities under this Code section to its executive director as it deems appropriate from time to time; provided, however, that the final approval of contracts provided for herein shall be by action of the board of the authority.

(d) The power of eminent domain shall not be delegated to any private entity with respect to any project commenced or proposed pursuant to this part."

SECTION 8.

This Act shall become effective on July 1, 2009.

SECTION 9.

All laws and parts of laws in conflict with this Act are repealed.